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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/355,637	08/02/1999	KLAUS-DIETER HAMMER	051009/0122	6739

7590

04/24/2002

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EXAMINER

HON, SOW FUN

ART UNIT PAPER NUMBER

1772

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DATE MAILED: 04/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application N .

09/355,637

Applicant(s)

HAMMER ET AL.

Examiner

Sow-Fun Hon

Art Unit

1772

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 April 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attachment to advisory action.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.Claim(s) objected to: None.Claim(s) rejected: 1-16 and 18-25.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: Attachment to advisory action

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*Advisory Action*

1. The proposed amendment in Paper # 10 (filed 04/09/02) has been entered, but does not place the application in condition for allowance for the reasons below.

2. Applicant argues that the Higgins is only directed to collagen casings which are treated with an aqueous solution of a polysaccharide dewatering agent which does not contribute to the mechanical stability and is not even permanently linked with the casing, and that one skilled in the art would not have been motivated to combine the teachings of Higgins and Lim et al.

Applicant is respectfully reminded that Higgins is the primary reference which teaches the tubular structure for encasing the food product, and that the biopolymer, extrudable natural protein both read on the extruded collagen products of Higgins. Lim et al. is the secondary reference which compensates for the deficiency of the primary reference Higgins to teach a biodegradable thermoplastic composition of the polysaccharide starch externally crosslinked to the collagen protein ('125, column 2, lines 20-35 and column 6, lines 1-15). Lim et al. is directed to an edible packaging in the form of molded tubing article ('125, column 11, lines 15-38 and column 12, lines 1-25) which can be molded by blowmolding (column 11, lines 15-38), and which has an increased level of water-resistance and improved mechanical properties ('125, column 2, lines 20-38), thus providing the motivation to use it as the food casing of Higgins.

3. Applicant argues that Metzger does not cure the deficiencies of Higgins or Lim et al. since Metzger teaches a method of flat or tubular film based on casein and cannot render obvious the subject matter of present claims 14 to 16 and 24. Metzger merely teaches that the wall thickness range in claim 24 is well known in the art of edible film casings.


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Any inquiry concerning this communication should be directed to Sow-Fun Hon whose telephone number is (703)308-3265. The examiner can normally be reached Monday to Friday from 9:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (703)308-4251. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9311.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.

SH  
04/23/02

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772 4/23/02